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April 12, 1993

Ms. Donna Searcy, Secretary
Federal Communications Commission

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FEDERAL COMMUNICATIONS COMMISSION
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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of Simplification of the Depreciation Prescription Process	CC Docket No. 92–296

REPLY COMMENTS OF THE GENERAL SERVICES ADMINISTRATION

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April 13, 1993

COMMENTS OF THE GENERAL SERVICES ADMINISTRATION

CC DOCKET NO. 92-296

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SUMMARY

As the agency vested with the responsibility for acquiring telecommunications services for use of the Federal Executive Agencies, GSA supports the Commission's efforts to simplify the depreciation represcription process. GSA finds, however, that none of the four options proposed by the Commission will provide both administrative cost savings and assurance that local exchange carriers will be prevented from passing excessive depreciation expense through to ratepayers.

It is well established that excessive telephone depreciation results in a confiscatory capital contribution by ratepayers, and is thus unlawful. Since the LECs retain both the incentive and the ability to pass excessive depreciation through to ratepayers, it is imperative that the Commission not relax its scrutiny of depreciation rates.

The Price Cap Carrier option would result in an abdication by the Commission of its responsibility to protect LEC ratepayers from excessive depreciation expense. The Depreciation Rate Range and the Depreciation Schedule options also fail to ensure a reasonable matching of depreciation expense to capital consumption by individual LECs. The Basic Factors Range option is conceptually flawed, and the controversy it would generate would eliminate any hope of true administrative cost savings.

GSA recommends, therefore, that the Commission simplify the depreciation process without sacrificing ratepayer interests by prescribing Companywide basic factors, by eliminating three–way meetings and by excluding net salvage from the depreciation prescription process.

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REPLY COMMENTS OF THE GENERAL SERVICES ADMINISTRATION

The General Services Administration ("GSA"), on behalf of the Federal Executive Agencies, hereby submits its Reply Comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), FCC 92–537, released December 29, 1992 in CC Docket No. 92–296. This NPRM solicits comments and replies on the simplification of the depreciation prescription process.

I. INTRODUCTION

In Comments filed on March 10, 1993 in this proceeding, GSA supported the Commission's efforts to simplify the depreciation prescription process, but opposed the four specific proposals described in the NPRM. GSA recommended that significant simplification could be achieved, however, (1) by allowing carriers to file on a Companywide or multi–state basis, (2) by eliminating three–way meetings, and (3) by excluding net salvage from the depreciation process.

Comments were also filed by the following:

- The United States Telephone Association ("USTA") and eleven local exchange carriers ("LECs");

- The National Association of Regulatory Utility Commissioners ("NARUC") and the Commissions or Staffs of eighteen states;
- The District of Columbia Office of the People's Counsel, the Florida Office of the Public Counsel, the Indiana Office of Utility Consumer Counselor, and the Pennsylvania Office of Consumer Advocate ("State Consumer Advocates" or "SCA");
- Two interexchange carriers ("IXCs");
- The California Cable Television Association ("CCTA"); and
- DeLoitte & Touche.

In these Reply Comments, GSA responds to the comments and proposals of these parties and urges the Commission not to relax its scrutiny of LEC depreciation rates.

II. THE RECOVERY OF EXCESSIVE DEPRECIATION EXPENSE FROM RATEPAYERS IS UNLAWFUL.

Although the Commission initiated this NPRM to explore "proposals which would simplify procedures and reduce associated costs,"[1] it is clear that commenting LECs have other goals in mind. Southwestern states:

> The true focus of this proceeding however should not merely be simplification, but development and improvement of the process to obtain the regulatory framework essential for future-oriented reform. This type of reform would provide for capital recovery in a transition marketplace, and could be utilized as a mechanism to drive the industry toward the desired investment in the infrastructure, while accommodating carriers' needs to respond to the competitive environment, where rapid technological advancements are materially shortening the economic service lives of existing investments.[2]

1 NPRM, para. 1.

2 Comments of the Southwestern Bell Telephone Company ("Southwestern"), p. 2.

More directly stated, the LECs want higher depreciation rates. They complain at length about the inadequacy of currently prescribed rates and the magnitude of existing depreciation reserve deficiencies.[3] Some LECs even seem to suggest that higher depreciation rates should be used to finance infrastructure development. NYNEX states:

> Depreciation and capital recovery provide the financial mechanism corresponding to the evolution of technology. Simply put, the recovery of investment in older technology pays for newer technology. In a competitive market, the pace of that investment recovery and technology deployment is critical to the national economy.[4]

As a threshold matter, therefore, GSA believes it is important for the Commission to reaffirm its responsibility to prescribe depreciation rates which do not result in the recovery of excessive depreciation expense from ratepayers. The Supreme Court confirmed this principle as a matter of law many years ago:

> If the predictions of service life were entirely accurate and retirements were made when and as these predictions were precisely fulfilled, the depreciation reserve would represent the consumption of capital, on a cost basis, according to the method which spreads that loss over the respective service periods. But <u>if the amounts charged to operating expenses</u> and credited to the account for depreciation reserve <u>are excessive, to that extent subscribers for</u> the telephone service <u>are required to provide</u>, in effect, <u>capital contributions</u>, not to make good losses incurred by the utility in the service rendered and thus to keep its investment unimpaired, but <u>to secure additional plant and equipment upon which the utility expects a return</u>.
>
> <u>Confiscation being the issue, the company has the burden of making a convincing showing that the amounts it has charged to operating expenses for depreciation have not been excessive</u>. That burden is

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3 See, e.g., Comments of USTA, pp. 2–6; BellSouth Telecommunications, Inc. ("BellSouth") pp. 5–20; Southwestern, pp. 2–9.

4 Comments of the NYNEX Telephone Companies ("NYNEX"), p. 7.

> not sustained by proof that its general accounting system has been correct. The calculations are mathematical but the predictions underlying them are essentially matters of opinion. They proceed from studies of the "behavior of large groups" of items. These studies are beset with a host of perplexing problems. Their determination involves the examination of many variable elements and opportunities for excessive allowances, even under a correct system of accounting, are always present. <u>The necessity of checking the results is not questioned. The predictions must meet the controlling test of experience</u>.[5]

Clearly, the Commission's depreciation responsibility entails far more than a mere pro forma solicitation of comments and prescription of requested rates as long as there is a possibility that ratepayers might be charged for excessive depreciation expenses.

In any case, it is far from obvious that the current depreciation prescription process has been inadequate. Attachment A displays the growth in depreciation reserve levels since divestiture of the Regional Bell Operating Companies ("RBOCs"). During periods of rapid growth and technologic development, it would not be surprising to see depreciation reserve levels decrease, as additions increase plant and retirements reduce depreciation reserves. Instead, over this turbulent period, depreciation reserve levels have actually increased from 23 percent to 39 percent. This increase was achieved despite significant modernization by the RBOCs, including:

- The increase in equal access lines from .2 percent to 98.6 percent.[6]

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5 <u>Lindheimer v. Illinois Bell Telephone Co.,</u> 292 U.S. 151, 168–170, 54 S.Ct. 658, 665–666 (1934). Emphasis added. Footnote deleted.

6 Trends in Telephone Service, Industry Analysis Division, Common Carrier Bureau, FCC, released September 16, 1992, Table 11.

- The increase in digital central offices from 1.9 percent to 69.2 percent; and the decrease in electro–mechanical offices from 66.3 percent to 8.9 percent.[7]

- The increase in fiber deployment from .5 million miles to 3.8 million miles.[8]

This record does not indicate to GSA that LEC depreciation rates have been too low, or that there is a significant depreciation reserve problem.

III. THE COMMISSION SHOULD NOT RELAX ITS SCRUTINY OF LEC DEPRECIATION RATES.

GSA explained in its comments that the LECs still retain the ability to pass excessive depreciation expense through to ratepayers.[9] Under the price cap plan, the LECs can avoid the sharing of excess earnings by increasing

Commission oversight. Although most of these contentions sound plausible, none of them bear up under scrutiny.

First, many LECs assert that Generally Accepted Accounting Principles ("GAAP") would prevent them from depreciating their plant too rapidly.[15] As GTE points out, however, the GAAP conservation principle "prefers the understatement (versus overstatement) of net income and net assets where any potential measurement problems exist."[16] Most accountants would agree that the very nature of depreciation makes it a challenge to measure. GAAP, independent auditors and the Security and Exchange Commission, therefore, might well prevent the LECs from understating depreciation, since this would overstate net income and net assets. It is highly unlikely, however, that GAAP, or any financial auditor, would find that a LEC (or any company, for that matter) had overstated its depreciation, since this would result in a conservative view of net income and net assets.

Second, some LECs suggest that the Commission could monitor depreciation to prevent abuse.[17] Although monitoring is appropriate, general observations are a poor substitute for detailed examination in a matter as important and complex as depreciation.

Third, some LECs argue that competition will prevent them from recovering excessive depreciation from ratepayers.[18] While this may now be true

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15 See, e.g., Comments of the Ameritech Operating Companies, p. 6; the Southern New England Telephone Company ("SNET"), pp. 10-11..

16 *Comments of GTE Service Corporation and its affiliated domestic telephone operations companies ("GTE"), p. 14.*

17 See, e.g., Comments of United Telephone–Southeast, Inc., pp. 6–8; Cincinnati Bell Telephone Company, pp. 8–9.

18 See, e.g., Comments of SNET, p. 10; USTA, pp. 23–26.

for AT&T, it is certainly not true for the LECs.[19] GSA fully supports the Commission's efforts to bring full and open competition to the local exchange market, but recognizes that effective competition will take time to develop.[20] For the present, the LECs retain virtually all of the market power of a monopoly, and could easily pass excessive depreciation through to its ratepayers.

Finally, some LECs argue that excessive depreciation would not be charged because it would be contrary to sound business judgment and, in the long run, self–defeating.[21] NYNEX states the argument as follows:

> If a LEC attempted to increase depreciation in a given year to avoid sharing, it would also increase the reserve during that year, reducing the net plant. Other things being equal, the rate of return would be even higher the following year, requiring even higher depreciation rates to avoid sharing, increasing the reserve even more, leading to a vicious circle.[22]

Taken to extreme, this logic would parallel the argument that some LECs make that ratepayers are protected because depreciation can only be taken once on the same plant.[23] There are two flaws to these arguments. The most obvious flaw is that the harm that comes to current ratepayers through excessive depreciation is not excused by a possible benefit to future ratepayers. Excess depreciation is confiscatory, and thus unlawful, regardless of its purpose. The second flaw is more subtle. A LEC might well decide that it is to its best interest to depreciate its plant as much as possible while it retains market power, so that it would position itself to meet future competitive circumstances with modern plant that is mostly depreciated. Such a LEC would not care that its rate base was falling, since it would expect to be freed entirely from earnings constraints once competition was pervasive. The problem with this scenario, of course, is that current ratepayers would essentially be subsidizing the future competitive advantage gained by the LEC.

To summarize, despite LEC protestations, it is clear that the LECs have *both the incentive and the ability to pass excessive depreciation rates through to* ratepayers, even under price caps, absent Commission control. It is critical, therefore, that the Commission not relax its scrutiny of LEC depreciation rates.

IV. NONE OF THE FOUR OPTIONS PROPOSED BY THE COMMISSION SHOULD BE ADOPTED.

The Commission proposed four options for simplification in the NPRM:[24]

1. The Basic Factors Range Option under which the Commission would establish a range of basic factors—future net salvage, projection life and survivor curves—for each account within which the carriers would be allowed to select.

2. The Depreciation Rate Range Option under which the Commission would establish a range of depreciation rates for each account within which the carriers would be allowed to select.

3. The Depreciation Schedule Option under which the Commission would establish a depreciation schedule for each account which each carrier would apply to its investment by vintage.

4. The Price Cap Carrier Option which would allow price cap carriers to file depreciation rates with no supporting data.

In its Comments, GSA found none of these options to be acceptable.[25]

24 NPRM, para. 9-12.

25 Comments of GSA, p. 11.

Understandably, in light of the above discussion, the Price Cap Carrier Option was warmly supported by all LECs, [26] and sharply rejected by all other parties.[27] USTA attempts to save this option by proposing that the carrier be required to file some support data,[28] but its description of the similarity of its proposal to current procedures could be considered misleading. USTA states:

> The Commission's Public Notice need not differ in any significant respect from the Public Notice provided today. The Commission now includes in its current Public Notice a summary of the data filed on rates and accrual changes; no change would be contemplated in this procedure. As is the case today, commenters would have access to all publicly-available material of the carrier on its depreciation rates that is on file at the Commission, through normal document distribution avenues.[29]

In fact, the Commission's Public Notice now includes the Commission Staff's proposals for depreciation accrual changes, not the LEC's proposals. The Staff's proposals are formulated after a detailed review of both public and proprietary data, and sometimes after a meeting with the company and concerned state commission staffs. These Public Notices seldom elicit many comments, in part, at least, because interested parties realize that the Staff's proposals are the result of careful scrutiny of company plans. The potential harm to ratepayers which could result from the Commission's abdication of its responsibilities to ensure reasonable depreciation rates makes the Price Cap Carrier Option totally unacceptable to users of telecommunications services.

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26 See, e.g., Comments of U S West, p. 6; BellSouth, p. 19.

27 See, e.g., Comments of the Nebraska Public Service Commission, pp. 2–3; the Indiana Utility Regulatory Commission, p. 7.

28 Comments of USTA, pp. 8–12.

29 Comments of USTA, pp. 10–11. Emphasis added. Footnotes deleted.

No commenting party supported the Commission's Depreciation Schedule Option. The New York Department of Public Service ("NYDPS") stated its concern as follows:

> The range of rates established would be derived from industry wide data and may reflect a range of reasonableness for depreciation rates for the nation's carriers as a group. But, the rate selected by a carrier within that range could be unreasonable for that individual carrier, given the unique factors surrounding its consumption of plant.[30]

As the Commission itself has recognized, this option "offers the greatest deviation from accuracy in matching allocation of costs with plant consumption."[31] The Depreciation Schedule Option, therefore, should be rejected.

The LECs generally favored the Depreciation Rate Range Option if the Commission decided against the Price Cap Carrier Option.[32] Almost without exception, however, this option was opposed by users and State Commissions.[33] The People of the State of California and the Public Utilities Commission of the State of California ("CPUC") stated the problems with this option as follows:

> As life and salvage factors would be ignored under this option, the concept of depreciation to match expense with capital consumption will be sacrificed for simplification. Also, this option uses industry average reserve, not the reserve position of the individual carrier which could be quite different. For these reasons, this option is not meaningful and should be considered less viable.[34]

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30 Comments of NYDPS, p. 11.

31 NPRM, p. 13.

32 See, e.g., Comments of BellSouth, pp. 34–38; GTE, p. 8..

33 See, e.g., Comments of the Michigan Public Service Commission Staff, p. 6; Oklahoma Corporation Commission, Public Utility Division, p. 7.

34 Comments of CPUC, p. 11.

The Commission should reject the Depreciation Rate Range Option because of its failure adequately to match the allocation of costs with plant consumption.

Most parties found the Basic Factors Range Option acceptable, although many state commissions would restrict its use to small, stable accounts.[35] GSA does not believe the Commission should adopt this option for any accounts, however, because the establishment of ranges is likely to be highly contentious, and the complexity of range management is likely to offset any possible simplification savings. The Public Utility Commission of Oregon ("PUCO") reported that its docket on this subject had been "extremely contentious," and predicted the same for any similar FCC proceeding.[36] The basic problem with the establishment of ranges is that if they are broad enough to include existing legitimate values, they would be broad enough to allow some carriers to choose variables which are not reasonable given their particular circumstances. Overly narrow bands, on the other hand, would result in similarly inappropriate factors for other carriers. GSA submits that any attempt to establish ranges from basic factors will produce savings which are illusionary and controversies which are real. In the final analysis, the Basic Factors Range Option should be rejected, too.

V. THE DEPRECIATION PRESCRIPTION PROCESS SHOULD BE SIMPLIFIED.

The failure of the four proposed options to ensure reasonable depreciation rates does not mean that simplification and administrative cost reduction is impossible. In its Comments, GSA recommended three changes which will

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[35] See, e.g., Comments of the Public Utility Commission of Texas, p. 3; the Missouri Public Service Commission, p. 2..

[36] See Comments of PUCO, p. 2.

simplify the depreciation process without sacrificing appropriate Commission safeguards against excess depreciation.[37]

First of all, the Commission should simplify its process by prescribing basic factors for accounts aggregated to the same level at which interstate access tariffs are filed and rate of return is measured. Most Regional Bell

Finally, the Commission should exclude net salvage from the depreciation process. The State Consumer Advocates,[39] NARUC[40] and a number of state commissions[41] found merit in this proposal. Indeed, current accounting for net salvage would not only simplify the depreciation process, it would also probably result in more appropriate accounting for gross salvage and the cost of removal.

[39] Comments of SCA, pp. 27–30.

[40] Comments of NARUC, pp. 14–16.

[41] See, e.g., Comments of the Utah Division of Public Utilities, p. 3; the Virginia State Corporation Commission Staff, pp. 3–4.

VI. CONCLUSION

As the agency vested with the responsibility for acquiring telecommunications services for use of the Federal Executive Agencies, GSA supports the Commission's efforts to simplify the depreciation represcription process. GSA finds, however, that none of the four options proposed by the Commission will provide both administrative cost savings and assurance that local exchange carriers will be prevented from passing excessive depreciation expense through to ratepayers. GSA recommends, instead, that the Commission achieve simplification by prescribing Companywide basic factors, by eliminating three–way meetings, and by excluding net salvage from the depreciation prescription process.

Respectfully submitted,

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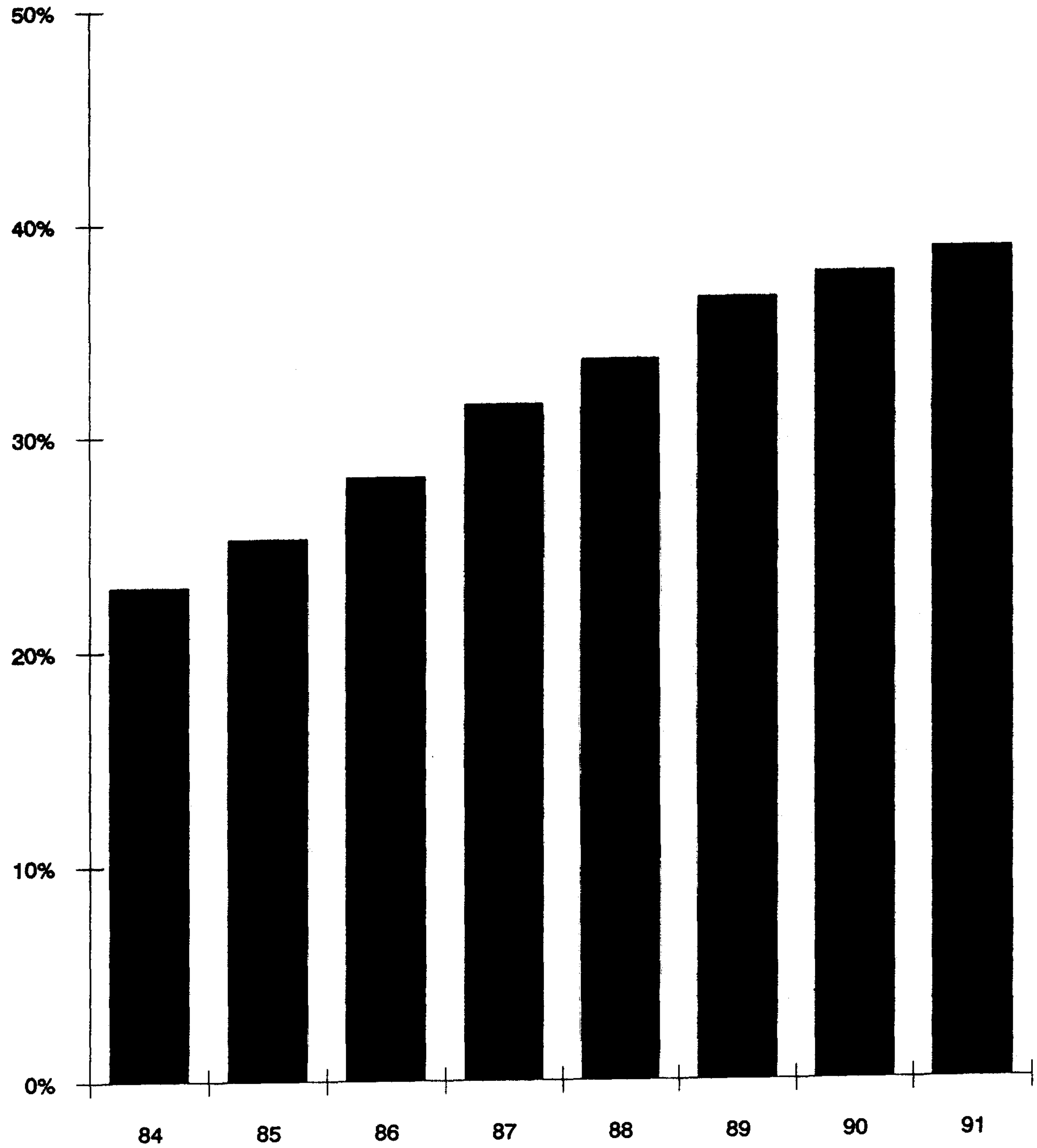

Source: Statistics of Common Carriers, FCC

CERTIFICATE OF SERVICE

I, Michael J. Ettner, do hereby certify that copies of the foregoing "Reply Comments of the General Services Administration" were served this 12th day of April 1993, by postage paid or hand delivery (indicated below by asterisks) to the following parties:

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